

>>> <MSerling@aol.com> 12/1/2006 5:29 PM >>>
Dear Mr. Davis,

Please have the Court consider the following comments with regard to Administrative Order No. 2006-6, Prohibition on "Bundling" Cases.

This Court has entered an Order effective August 9, 2006, which prevents asbestos judges in the state of Michigan from consolidating asbestos cases for settlement or trial. The Order of this Court was a 4/3 decision and a vigorous dissent was voiced by three justices of the Court.

I have been before this Court on two occasions since 2004 and have submitted briefs on the issue of establishing an inactive asbestos docketing system for non-malignant asbestos related disease. Indeed, this Court had never taken up the issue of consolidation of cases for settlement and/or trial. The focus had always been on whether asbestosis cases should be placed on an inactive docket while asbestos cancer cases received first consideration and resolution. Although we had the opportunity to oppose the concept of an inactive docket, no similar opportunity was given to argue or fully brief the issues surrounding consolidation/bundling before the adoption of Administrative Order No. 2006-6.

Obviously, the dissenting justices saw the real negative effects that this Court Order could have on the judicial system and the rights of all parties to speedy justice. Judicial economy will not be served by this Order. I am hopeful that one member of the majority, in taking a second look, will join the dissenters in reversing this Order.

I have specialized in asbestos litigation since 1975. In the early years virtually every case went to trial. Cases took 3-4 weeks to try and virtually all were appealed. This did not serve anyone; not the plaintiffs, not the defendants, nor the judicial system. Over time it became apparent that all were served better through negotiation and resolution by settlement. Occasionally trials occurred but generally cases were resolved through settlement with judicial assistance. Experienced asbestos judges aided the process immensely since they were as educated about asbestos litigation as the lawyers representing plaintiffs and defendants. This Order takes all of this away and puts the litigants back to hardened positions that existed in the 1970's.

At the beginning of this process this Court seemed very concerned with the rights of cancer victims. This Order places all victims in the precarious position of possibly waiting far longer than the two to two and a half years in which cases were previously resolved.

The remedy envisioned by the Court in this Order is simply not required to protect the rights of any party. Furthermore, defense attorneys have had no documented historical objections to resolving cases in the manner which this Order seeks to prohibit. Indeed, the economies of scale in moving and settling asbestos cases in Michigan dockets have benefitted both plaintiffs and defendants. No one objected to this process until the middle of the hearing before this Court on whether an inactive docket should be instituted. It appears that the Court did this sua sponte, as a misplaced alternative to what the Court obviously felt was legislating. The resulting remedy will harm all parties and the Court system rather than helping anyone. All of this for naught since no one has really demonstrated that asbestos litigation in Michigan was ever in a real crisis. After all, Michigan's 2,500 cases pales in comparison to Ohio's more than 40,000 cases.

None of the legislation or court rules cited by Petitioner's counsel, Robert S. Krause, relating to consolidation of cases demonstrates any prohibition against consolidated settlement discussions supervised by the court. Indeed, Ohio's law indicates that consolidation for trial purposes is permitted when no party objects. In Michigan, historically, there have been no objections from defense counsel to consolidated settlement discussions supervised by the court.

This Court should leave to the discretion of circuit court judges the decision to supervise settlement discussions in a consolidated manner on a docket by docket basis, as has been done for many years. Why not let judges do what they are supposed to do? They should be permitted to resolve cases as efficiently as possible.

Respectfully submitted,

Michael B. Serling
Michael B. Serling, P.C.

Attorneys for Asbestos Plaintiffs
280 N. Old Woodward Avenue
Suite 406
Birmingham, MI 48009
248.647.6966
248.647.9630 fax